
AYOB SAUD

v.

T.S. SAMBANTHAMURTHI

HIGH COURT MALAYA, PENANG

MOHAMED DZAIDDIN J

[CIVIL SUIT NO. 274 OF 1979]

20 SEPTEMBER 1988

TORT: *Defamation - Libel - Allegations of - Defence of qualified privilege - Malice - Burden of proof - Publication to third person - Defamation Act 1957.*

The defendant, a landowner was interested to develop his property. The Kooperasi Nesa Pelbagai Bhd. (Nesa) were appointed developers of the said property. Nesa in turn employed the plaintiff to carry out survey work. On completion of the survey work the plaintiff submitted his bill to Nesa and sent a copy of the bill to the defendant for professional services rendered. The defendant replied to the said letter addressed to Nesa with a copy to the plaintiff. The plaintiff alleged, on the basis of the contents of the letter and in particular, the third paragraph, that he had been libelled. The plaintiff commenced the present proceedings to claim damages.

Held:

[1] Although there was sufficient publication to a third person the words in the letter were not reasonably capable of bearing a meaning defamatory of the plaintiff.

[2] In the circumstances of the whole case, the Court found that the plaintiff had failed to prove that the words complained of were defamatory of him.

[Plaintiffs action dismissed with costs.]

Cases referred to:

Rajagopal v. Rajam [1972] 1 MLJ 45

Jones v. Skelton [1963] 1 WLR 1362

Other sources referred to:

The Law of defamation in Malaysia and Singapore, M/s. Rasamalar Poopalasingam and Stanley Jeremiah - [1988] 1 MLJ CVI

Gattley on Libel and Slander, 6th Edn., p. 14, para. 31

Longman Dictionary of English Idioms

[Editors Note: The plaintiff in the abovesaid action is appealing to the Supreme Court against the said decision.]

For the plaintiff - Ghazi bin Ishak; M/s. Presgrave & Matthews

For the defendant - Shahul Hamid; M/s. Sri Ram, Zulkifli & Kumar

*a***JUDGMENT****Mohamed Dzaiddin J:**

In this action, the plaintiff sued the defendant for damages for libel in a letter written by the defendant dated 28 May 1979 concerning the plaintiff in connection with certain professional duties undertaken on behalf of the defendant.

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The facts of the matter are these. The plaintiff is a land surveyor by profession and has been carrying on his practice under the name and style of Syarikat Ayob bin Saud. The defendant, on the other hand, is a lawyer and a retired senior legal officer, formerly attached to the Attorney General's Chambers, Kuala Lumpur. Insofar as this case was concerned the defendant is a registered proprietor of a piece of land known as Lot 1899, Mukim Sidam Kanan, Kulim, Kedah, ("the said land"). Sometime in 1978, the defendant was interested to

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develop the said land and appointed Koperasi Nesa Pelbagai Bhd. as the developer. It is quite correct to assume that as he was too preoccupied with his professional duties, he appointed one Perianayagam, his old schoolmate, to be his agent in supervising the project. The development of the said land required some sub-divisional survey work to be undertaken by a surveyor. The plaintiff was then appointed by the defendant to carry out the survey work. After the completion of his assignment, the plaintiff submitted his bill dated 23 May 1979 for professional services rendered to Koperasi Nesa for payment, with a copy sent to the defendant. There seemed to be some dispute regarding the professional fees charged by the plaintiff.

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Hence, on or about 28 May 1979 the plaintiff received a copy of a letter written by the defendant to one C. Thanabalasingam, the Secretary of Koperasi Nesa. The letter (Exhibit P5) reads as follows:

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T.S. Sambanthamurthy,
G.M., M.B.I.M. A.M.N.
Gray's Inn
Barrister-at-Law

3496, Lower Ampang
Kuala Lumpur
Telephone: 647500
462252

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Mr. C. Thanabalasingam,
Koperasi Nesa,
M.I.C. Building,
1, Jalan Rahmat,
Kuala Lumpur.

Dear Sir,

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Re: Lot 1899, Mukim Sidam Kanan, Kulim.

I refer to bil No. 98/79 dated 23 May 1979 from Syarikat Ayob Bin Saud. Please do not make any payment on this bill. This work was done by the owners of the neighbouring lot and was discussed at the Majlis Daerah Kerajaan Tempatan meeting at Kulim on 22 April 1979 where I had to agree to share the cost of preparation of the Benchmark plan - minutes attached.

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Syarikat Ayob Bin Saud have been told on this even before they started work to prepare the plan.

I am surprised that a Chinese surveyor has charged RM1,450 whereas a Bumiputra asks for RM4,480 which is daylight robbery. Besides I never gave directions to Syarikat Ayob bin Saud to prepare the plans.

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Yours faithfully,

C.C.

Syarikat Ayob Bin Saud,
Bilik 106, Tingkat Pertama,
Bangunan Malayan Bank,
9, Leboh Union, Penang.

Mr. S. Perianayagam,
Kulim, Kedah.

Thus, on the basis of the above letter and in particular, the third paragraph, the plaintiff alleged that he had been libelled by the defendant and claimed damages. The material paragraphs of the plaintiff's statement of claim alleging defamation are as follows:

6. On or about 28 May 1979, the defendant falsely and maliciously wrote, signed and published or caused to be written and published of and concerning the plaintiff and of him in the way of his said profession or occupation and in relation to his conduct therein, in the form of a typewritten letter addressed to the said C. Thanapalasingam, the words following that is to say:

I am surprised that a Chinese surveyor has charged RM1,450 whereas a Bumiputra asks for RM4,480 which is daylight robbery ...

7. The said letter was dictated by the defendant to a clerk whose name is at present unknown to the plaintiff, and after being transcribed by the said clerk by a typewriting machine was signed by the defendant and sent to the said C. Thanapalasingam and a copy was sent by post in an envelope addressed to the plaintiff's firm and a further copy was also sent to the said S. Perianayagam. The said letter was therefore not only opened and read in the ordinary course of business by Puan Ooi Ah Moy, a clerk employed by the plaintiff, but was also read by the said C. Thanapalasingam and the said S. Perianayagam.

8. The said words in their natural and ordinary meaning meant and were understood to mean:

- (a) that the plaintiff was a dishonest person who claimed money from the Koperasi Nesa to which he was not entitled;
- (b) that the plaintiff had been guilty of dishonest and dishonourable conduct;
- (c) that the plaintiff acted in a manner unbecoming of a licensed land surveyor;
- (d) that the plaintiff acted in an unprofessional or undisciplined or unprincipled manner;
- (e) that the plaintiff did not know or did not have regard to the proper fees chargeable in respect of the work done by the plaintiff for the defendant and/or Koperasi Nesa;
- (f) that the plaintiff could be compared to and equated with robbers.

9. Further or in the alternative the said words meant and were understood to mean that in charging fees of RM4,480 the plaintiff relied on his status as a Bumiputra in charging exorbitant fees without due regard to the standards and fees set by the Institute of Surveyors Malaysia.

Particulars pursuant to the rules of the High Court O. 19 r. 6

In referring (1) to the plaintiff as a "Bumiputra" and comparing him to a "Chinese surveyor".

- (2) to the difference in fees charged by surveyors of different races, and
- (3) to the fees charged as "daylight robbery".

10. By reason of the premises the plaintiff had been greatly injured in his credit, character and reputation and in the way of his said profession or occupation and has been brought into hatred, ridicule and contempt.

- a** The defendant, in his amended defence, denied the plaintiff's claim and in particular he denied that he wrote the said letter, Exhibit P5, falsely and maliciously. Further he denied that the words set out in para. 6 of the statement of claim bore or understood to bear any meaning alleged in para. 8 therein. It is the defendant's case that the publication of P5 was on an occasion of qualified privilege as per particulars in para. 10 of the amended defence. The plaintiff then filed his reply to the amended defence whereby he pleaded in para. 5 of the reply that the defendant was actuated by express malice when publishing those words as set out in para. 6 of the statement of claim.
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The Law

- At the outset, I must state that my task in considering the law on defamation in this case has been made easier by an article on "*The Law of Defamation in Malaysia and Singapore*" by Messrs. Rasamalar Poopalasingam and Stanley Jeremiah in the Malayan Law Journal [1988] 1 MLJ cvi.
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- In our law on libel, which is governed by the Defamation Act 1957, the burden of proof lies on the plaintiff to show (1) the words are defamatory; (2) the words refer to the plaintiff; and (3) the words were published. Where a defence of qualified privilege is set up, as in the present case, the burden lies on the defendant to prove that he made the statement honestly, and without any indirect or improper motive. Then, if he succeeds in establishing qualified privilege, the burden is shifted to the plaintiff in this case to show actual or express malice which upon proof thereof, communication made under qualified privilege could no longer be regarded as privileged. (*Rajagopal v. Rajam* [1972] 1 MLJ 45.)
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- I shall now deal with the evidence in the following sequence. First, did the words in para. 3 of Exhibit P5 (also pleaded in para. 6 of the statement of claim) refer to the plaintiff? It is plain and obvious that they were written about the plaintiff. Secondly, was there publication of the libel? In law, to constitute publication, the defamatory matter must be published to a third person other than the plaintiff. In other words, it is the making known of the defamatory matter, after it has been written, to some person other than the person to whom it is written. In the present case, the publication of the defamatory matter is pleaded under para. 7 of the statement of claim (*supra*). In support of the said averment, the plaintiff called Miss Ooi Ah Moi (PW2) to testify that at the material time she was employed by the plaintiff in his firm as a general clerk. Her duties included the opening of files and correspondences received by the firm. When shown Exhibit P5, she stated that she remembered opening it. She read its content, searched for the connecting file and passed it for the plaintiff's attention. Under cross-examination, she stated that she also carried out secretarial duties for the plaintiff. She received an average of ten letters per day and normally opened these letters and read their contents. The letter P5 together with the file was given to the plaintiff personally. In addition Exhibit P5 was also sent to Perianayagam, who was the defendant's agent. Upon these evidence, I am satisfied and I hold that there is sufficient publication to a third person.
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- The third consideration, which is the crux of the whole case is whether the words published are defamatory. "To be defamatory the imputation need have no actual effect on the person's reputation; the law looks only to its tendency." (*Gatley on Libel and Slander*, 6th Edn., p. 14, para. 31.) On this issue, the first point to consider is whether the words complained of in their natural and ordinary meaning are defamatory of the plaintiff. The Judicial Committee of the Privy Council in *Jones v. Skelton* [1963] 1 WLR 1362 stated the law as follows:
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- It is well settled that the question whether words which are complained of are capable of conveying a defamatory meaning is a question of law and is therefore one calling for decision by the Court ... In deciding whether words are capable of conveying a defamatory meaning the Court will reject those meanings which can only emerge as the product of some strained
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forced or utterly unreasonable interpretation. In *Capital and Counties Bank v. George Henry & Son*, Lord Selborne LC said:

The test, according to the authorities is whether, under the circumstances in which the writing was published, reasonable men to whom the publication was made, would be likely to understand it in a libellous sense.

The ordinary and natural meaning of it may be implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning capable of being detected in the language used can be part of the ordinary and natural meaning of words. See *Lewis v. Daily Telegraph Ltd.* The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction would draw from the words. The test of reasonableness guides and directs the Court in its function of deciding whether it is open to the jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense.

In the present case, the alleged offending words are stated in para. 3 in Exhibit P5 which reads as follows:

I am surprised that a Chinese surveyor has charged RM1,450 whereas a Bumiputra asks for RM4,480 which is daylight robbery ...

According to the statement of claim, it is averred that these words, in their natural and ordinary meaning meant and understood to mean that the plaintiff was a dishonest person, that he acted in a manner unbecoming of a licensed land surveyor and that he failed to have regard to the proper fees chargeable for the simple work undertaken and that he could be compared to and equated with robbers. Further, or in the alternative, the plaintiff averred that the comparison of the fees between a Chinese and a Bumiputra surveyor was intended to mean that the plaintiff relied on his Bumiputra status in charging exorbitant fees without regard to the scale fees provided by the Institute of Surveyors Malaysia. The plaintiff in his brief evidence stated that the letter P5 had the effect of showing that he was a dishonest person and had acted dishonourably in discharging his professional duties. Further, he felt the comparison in the fees between a Chinese and a Bumiputra surveyor was intended to convey a bad reflection on the standard of Bumiputra surveyors as a whole.

It is common ground that the objectionable expression used in the paragraph complained of was "daylight robbery". According to *Longman Dictionary of English Idioms*, "daylight robbery" is an English colloquialism meaning "a price or charge made that is so high that the customer might almost think that he is being robbed of his money." Thus, in the context of the whole paragraph, in my opinion, both the expression "daylight robbery" and the alleged innuendo i.e. the comparison between a Chinese and a Bumiputra surveyor, merely conveyed to all and sundry that the professional fees charged by the plaintiff was exorbitant. These words were used to emphasise the defendant's utter disgust with respect to the plaintiff's bill and they were used as words of general abuse. In my judgment, the paragraph complained of in Exhibit P5, in their natural and ordinary meaning, do not have the meaning ascribed to them by the plaintiff either in his pleading or in his evidence. They are not reasonably capable of bearing a meaning defamatory of the plaintiff.

In the circumstances of the whole case, and for the above reasons, I find the plaintiff has failed to prove that the words complained of are defamatory of him. Accordingly, the plaintiff's action is dismissed with costs.

Also found at [1989] 1 CLJ 152